SPECIAL ISSUE

Embu County Gazette Supplement No. 5 (Bills No. 3)

REPUBLIC OF KENYA

EMBU COUNTY GAZETTE SUPPLEMENT

BILLS, 2014

NAIROBI, 6th May, 2014

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PRINTED AND PUBLISHED BY THE GOVERNMENT PRINTER, NAIROBI

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THE EMBU COUNTY ALCOHOLIC DRINKS CONTROL BILL, 2014

A Bill for

AN ACT of The County Assembly of Embu to provide for the licensing and regulation of the production, sale, distribution, consumption and outdoor advertising, of alcoholic drinks, and for connected purposes.

ENACTED by the County Assembly of Embu, as follows—

PART I—PRELIMINARY

Short title and commencement

1. This Act may be cited as the Embu County Alcoholic Drinks Control Act, 2014 and shall come into operation on the date of publication in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires-

"alcohol" means the product known as ethyl alcohol or any product obtained by fermentation or distillation of any fermented alcoholic product, rectified either once or more often, whatever the origin, and shall include synthetic ethyl alcohol, but shall not include methyl alcohol and alcohol completely denatured in accordance with the prescribed formulas;

"alcoholic drink" includes alcohol, spirit, wine, beer, liquor, traditional alcoholic drink, and any one or more of such varieties containing one-half of one percent or more of alcohol by volume, including mixed alcoholic drinks, modified industrial alcohol blended for human consumption and every liquid or solid, patented or not, containing alcohol and capable of being consumed by a human being;

"authorized officer" means an authorized officer within the meaning of section 50;

"Authority" means the National Authority for the Campaign Against Alcohol and Drug Abuse" established under the National Authority for the Campaign Against Alcohol and Drug Abuse Act, 2012;

"chief officer" means the chief officer for the time being responsible for the alcoholic drinks control;

'cinema' has the meaning assigned to it in the Films and Stage Plays Act;

"County" means the Embu county;

"Directorate" means the Alcoholic Drinks Control Directorate established under section 4;

"entity" includes a company, corporation, firm, partnership, association, society, trust or other organisation, whether incorporated or not;

"Executive Member" means the County Executive Committee member for the time being responsible for alcoholic drinks control;

"Fund" means the Alcoholic Drinks Control Fund established by section 6;

"Governor" means the Governor of Embu County;

"health institution" means a hospital, nursing home, convalescent home, maternity home, health centre, dispensary or other institution where health or other medical services are rendered free of charge or upon payment of a fee;

"illicit trade" means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase of alcohol or its products, including any practice or conduct intended to facilitate such activity;

"licensee" means a person who holds a licence granted under this Act;

"locality" unless where context otherwise provides to the contrary, means a city, municipality, town, urban area, sub-county or ward as the case may be;

"manager" in relation to —

(a) a cinema or theatre, includes an assistant manager, a person holding an office analogous to that of a manager or assistant manager of the cinema or theatre or any person in charge or in control of the cinema or theatre;

(b) a health institution, includes the owner or a person in charge or in control of the health institution;

(c) a specified building, includes the owner, occupier, lessee or the person in charge or in control of the specified building;

"manufacture" means the brewing, distilling, tapping or any processing or intermediate processing of an alcoholic drink and includes the packaging, labeling, distribution or importation of an alcoholic drink for sale in the county or any where in Kenya;

"manufacturer", in respect of an alcoholic drink, includes any entity that is involved in its manufacture, including an entity that controls or is controlled by the manufacturer, or that is controlled by the same entity that controls the manufacturer;

"package" means the container, receptacle or wrapper in which an alcoholic drink is sold or distributed and includes the carton in which multiple packages are stored;

"retailer" means a person who is engaged in a business that includes the sale of any alcoholic drink to consumers;

"review committee" means the County Alcoholic Drinks Regulation Administrative Review Committee established under section 10;

"sell" includes—

(a) barter or exchange without use of money;

(b) offer or expose for sale, barter or exchange without use of money;

(c) supply, or offer to supply, in circumstances in which the supplier derives or would derive, a direct or indirect pecuniary benefit;

(d) supply or offer to supply, gratuitously but with a view of gaining or maintaining custom, or otherwise with a view for commercial gain;

"sub county committee" means the Sub-county Alcoholic Drinks Regulations Committee appointed under section 9.

Objects and purpose of the Act

3. The object and purpose of this Act is to provide for licensing of alcoholic drinks by the County government pursuant to Part II of the Fourth Schedule to the Constitution so as to control the production, sale,

distribution, promotion and use of alcoholic drinks and the promotion of research, treatment and rehabilitation for persons dependent on alcoholic drinks in order to—

(a) protect the health of the individual in light of the dangers of excessive consumption of alcoholic drinks;

(b) protect persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks

(c) protect consumers of alcoholic drinks from misleading or deceptive inducements and inform them of the risks of excessive consumption of alcoholic drinks;

(d) protect the health of persons under the age of eighteen years by preventing their access to alcoholic drinks;

(e) inform and educate the residents in the county on the harmful health, economic and social consequences of the consumption of alcoholic drinks;

(f) adopt and implement effective measures to eliminate illicit trade in alcohol including smuggling, illicit manufacturing and counterfeiting;

(g) ensure fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks;

(h) reduce and mitigate the negative health, social and economic impact on communities resulting from production, sale and consumptions of alcoholic drinks.

PART II—ADMINISTRATION

Establishment of Directorate

4. (1) There is established in the county the Directorate of Alcoholic Drinks Control which shall be a directorate in the county public service.

(2) The functions of the Directorate shall be to—

(a) support and facilitate Sub-county Committees in carrying out their functions;

(b) carry out public education on alcoholic drinks control in the county directly and in collaboration with other public or private bodies and institutions;

(c) facilitate citizen participation in matters related to alcoholic drinks control in accordance to framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;

(d) facilitate and promote in collaboration with other county and national government institutions the establishment of treatment and rehabilitation facilities and programmes;

(e) carry out research directly or in collaboration with other institutions and serve as the repository of data and statistics related to alcoholic drinks control;

(f) develop in collaboration with other county and national government departments strategies and plans for implementing this Act and control of alcohol abuse and any other relevant national legislation and coordinate and support their implementation;

(g) advise the executive member generally on the exercise of his powers and performance of his functions under this Act, and in particular on county policy and laws to be adopted in regard to the production, manufacture, sale and consumption of alcoholic drinks;

(h) in collaboration with other relevant county departments, prepare and submit an alcoholic drinks status report bi-annually in the prescribed manner to the Executive Member which shall be transmitted to the county executive committee, the County Assembly and the Authority;

(i) recommend to the Executive Member legislation of laws and regulations related to alcoholic drinks;

(j) Coordinating, monitoring and evaluating the implementation of this Act including the operations of the Sub-county Committees and

advising the Executive Member on the necessary measures to be adopted;

(k) carry out such other roles necessary for the implementation of the objects and purpose of this Act and perform such other functions as may, from time to time, be assigned by the executive member.

(3) The Directorate shall comprise a director and four deputy directors with prosecutorial competences recruited by the County Public Service Board and appointed by the Executive Member with the approval of the County Assembly

(4) The Executive Member through the County Public Service Board shall ensure that the Directorate has adequate human resource to enable it carry out the functions assigned under this Act.

(5) The report referred to in sub section (2) (h) shall contain among others—

(a) data on status of alcoholic drinks use and impact disaggregated in terms of age, gender, geographical location;

(b) impact of alcoholic drinks in the county;

(c) measures adopted to control and reduce negative impact of alcoholic drinks in the county;

(d) level of public participation in implementing the Act and feedback from residents of the county in relation to appropriate processes for mitigating impact of alcoholic drinks use;

(e) data on use of treatment and rehabilitation services in each Ward;

(f) challenges faced in implementation of the Act;

(g) level of collaboration with other county and national government agencies;

(h) any matter relevant to the implementation of the Act.

Establishment of rehabilitation

5. (1) The Directorate shall—

facilities and programs

(a) in collaboration with other relevant county and national government agencies establish treatment and rehabilitation facilities and programs for persons dependent on alcoholic drinks in each sub-county and one referral facility in the county;

(b) ensure that the treatment and rehabilitation facilities have the necessary human resources for effective operation and service delivery;

(c) ensure that the treatment and rehabilitation services are designed in a manner that is accessible and affordable to persons dependent on alcoholic drinks.

Establishment of the Fund

6. (1) There is established a fund to be known as the Alcoholic Drinks Control Fund into which shall be paid—

(a) such licence and other fees as may be payable under this Act;

(b) such sums as may be realized from penalties, fines and property forfeited to the county government under this Act;

(c) sums received, including contributions, gifts or grants from or by way of testamentary bequest by any person;

(d) moneys earned or arising from any investment of the Fund;

(e) all other sums which may in any manner become payable to, or vested in, the Fund.

(2) The Executive Member responsible for finance shall ensure that the budget of the Directorate is submitted to the County Assembly for approval together with the County budget.

(3) The budget referred to in subsection (2) shall not exceed thirty percent of the last audited revenue paid into the Fund, excluding the amount contemplated under subsection (1)(c). PROVIDED the County Executive Committee shall allocate funds to meet the expenditure of the Directorate in its first year of operations.

(4) Where, in terms of subsection (1)(b), any immovable property is assigned to the Fund, the Director shall deal with the property in a proper manner

and may sell the property and use the proceeds of sale for the purposes for which the Fund is established:

Provided that the Director shall act in accordance with the requirements under the Public Financial Management Act, 2012, the Public Procurement and Disposal Act and any other written law governing public financial management.

(5) The Fund shall be used for meeting the capital and recurrent expenditure relating to-

(a) carrying out the functions of the Directorate stipulated under section 4;

(b) assisting in the operations of the Sub-county Committees;

(c) any other matter incidental to the matters stated in paragraphs (a) and (b).

(6)The balances in the allocation to the Fund at the close of each financial year shall be paid into the County Revenue Fund, but shall be re-appropriated for the purposes of the Fund.

Administration of the Fund

7. (1) The Fund shall be administered by the Director.

(2) The Director may, with the approval of the Executive Member for the time being responsible for finance, invest or place on a deposit account any of the moneys of the Fund and any interest earned on moneys so invested or deposited shall be placed to the credit of the Fund.

(3) The Director shall—

(a) be the accounting officer of the Fund;

(b) impose conditions on the use of any expenditure personally authorized and may impose any restriction or other requirement concerning use of expenditure;

(c) cause to be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;

(d) prepare, sign and transmit through the executive member to the Auditor-General in respect of each

financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund in accordance with the Public Audit Act, 2003 and in such details as the county treasury may from time to time direct;

(e) furnish such additional information as may be required for examination and audit by the Auditor-General or under any law; and

(f) designate such staff as may be necessary to assist in the management of the Fund provided that such staff shall work in the Directorate.

PART III—LICENSING

Activities to be licensed

8. (1) No person shall—

(a) manufacture or otherwise produce;

(b) sell, distribute or dispose of, or deal with;

any alcoholic drink in the county except under and in accordance with a licence issued under this Act.

(2) Any person who contravenes the provisions of subsection (1) commits an offence.

(3) Subsection (1) shall not apply to—

(a) the importation of alcoholic drinks into the country if the alcoholic drink has been imported to the country pursuant to an import license issued by the Authority;

(b) the bona fide administration or sale for purely medical purposes, and in accordance with any written law for the time being in force governing the administration and sale of medicine, by a medical practitioner, a veterinary surgeon registered under the Veterinary Surgeons Act or a pharmacist registered under the Pharmacy and Poisons Act, of a medicine containing alcoholic drink;

(c) the sale of spirituous or distilled perfume, or perfumery;

(d) the sale of industrial alcohol;

(e) the sale by auction by an auctioneer, licensed under the Auctioneers Act, 1996, of an alcoholic drink in quantities not less than those authorized to be sold under a wholesale alcoholic drink licence belonging to a wholesale dealer, on the licensed premises of the dealer;

(f) the sale by a deceased person's legal personal representative of an alcoholic drink forming part of the estate of the deceased person;

(g) the sale by a trustee in bankruptcy of an alcoholic drink forming part of the bankrupt's estate;

(h) the sale by the liquidator of a company of an alcoholic drink forming part of the company's assets;

(i) the sale of alcoholic drink at the County Assembly Buildings, if sold with the permission of the Speaker;

(j) the sale of alcoholic drink to the members only of any canteen, club, institute, mess or similar institution of the disciplined forces for reasons other than for personal profit:

Establishment of the sub-county committee

9. (1) There shall be, for every Sub-county, a committee to be known as the Sub-county Alcoholic Drinks Regulation Committee which shall—

(a) issue licenses in accordance with this Act;

(b) be a quasi judicial organ with power to enforce the provisions of this Act;

(c) perform such other functions as may, from time to time be assigned to it by the Director.

(2) The Sub-county Committee may, in the discharge of its functions under this Act, make inspection or other visits to premises at such times as it may deem appropriate:

Provided that not more than six months shall pass before conducting an inspection on licensed premises.

(3) The sub-county Committee shall issue an inspection report in the prescribed form for each inspection carried out.

(4) In carrying out its functions, the Sub-county Committee shall—

(a) ensure that there is effective public participation in accordance with the framework for citizen participation established under the County Governments Act, the Urban Areas and Cities Act or any other relevant written law;

(b) collaborate with ward administrators and village administrators and councils appointed under the County Governments Act, 2012 and the officers in charge of coordination of national government functions in the wards and villages;

(c) collaborate with similar committees in other counties for effective implementation of the Act.

(5) The sub-county committee shall consist of—

(a) the Sub-county administrator appointed under the County Governments Act who shall be the Chairperson;

(b) five members of whom not more than two thirds shall be of the same gender, appointed by the Executive Member from among residents of the sub-county;

(b) the sub-county public health officer who shall be an *ex-officio member*;

(c) The Deputy Director responsible for the sub-county who shall be the Secretary;

(d) the officer responsible for coordination of national government functions in the sub- county or his designated representative who shall be an *ex-officio* member;

(e) the officer for the time being responsible for physical planning in the sub-county who shall be an *ex-officio* member;

(f) the sub-county public health officer who shall be an *ex-officio* member

(g) the officer commanding Kenya Police Service in the sub-county who shall be an *ex-officio* member

(h) the officer commanding the Administration Police Service in the sub-county who shall be an *ex-officio* member

(6) In any quasi judicial proceedings of the Committee, the Deputy Director shall prosecute a matter, and an accused person shall not be denied the right of defence, including the right to legal representation.

(7) A person shall not be a member of the Sub-county Committee if such person is—

(a) the holder of a licence in the county under this Act;

(b) a partner in a firm or director or shareholder of a company or other body which is the holder of a licence in the county under this Act;

(c) directly or indirectly employed as an agent of a person, firm or company which is the holder of a licence in the county under this Act;

(d) undischarged bankrupt;

(e) a person who has been convicted of an offence under this Act or of a felony.

(8) The conduct of business and affairs of the sub-county committee shall be in public and in such manner as may be prescribed.

Establishment of review committee

10. (1) There is established the County Alcoholic Drinks Control Administrative Review Committee.

(2) The Review Committee shall consist of—

(a) the Chief officer who shall be the chairperson;

(b) the county public health officer,who shall be an *ex-officio*

(c) the Director who shall be the Secretary;

(d) the officer responsible for coordination of national government functions in the county or his designated representative;

(e) the officer for the time being responsible for physical planning in the county;

(f) one person who is an Advocate of the High Court appointed by the executive member from among staff serving in the county public service;

(g) one resident from each sub county appointed by the executive member through a competitive process in accordance with the prescribed rules, one of whom shall be a youth provided that one person shall be of the opposite gender.

(h) The officer commanding Kenya Police Service in the County, who shall be an *ex-officio* member

(i) The officer commanding Administration Police Service in the County who shall be an *ex-officio* member.

(3) The Review Committee shall be responsible for reviewing on appeal decisions made by a sub-county Committee.

(4) The conduct of business and affairs of the Review Committee shall be in such manner as may be prescribed.

Application for a licence

11. (1) A person intending to produce, manufacture, distribute any alcoholic drink in the county or to operate an establishment for the sale of an alcoholic drink shall make an application in a prescribed form to the sub-county Committee in the sub-county where the premise is to be situated and shall pay a prescribed fee.

(2) The application under subsection (1) shall contain-

(a) a comprehensive information on the nature, orientation and other justification for the establishment of the manufacturing plant or establishment for sale;

(b) an indication as to whether the manufacture or sale of the alcoholic drink is licensed in another county and if so the evidence of such licensing;

(c) for a manufacturer's licence, certification from Kenya Bureau of Standards;

(d) such other matters as may be prescribed.

(3) The Sub-county Committee shall, within twenty-one days after the submission of application for a licence, prepare a notice setting forth the names of all applicants, the types of licences applied for, the premises in respect of which the licences are applied for and the time, date and place of the meeting, and shall forthwith cause a copy of the notice to be—

(a) published at the offices of the Sub-county Administrator and Ward Administrator for a period of not less than twenty- one consecutive days;

(b) posted in some conspicuous place at or near the applicant's premises;

(c) sent to the Inspector-General of Police, or to such police officer as the Inspector-General may have notified the Governor that he has appointed to receive it on his behalf;

(d) sent to the sub-county public health officer in the sub-county in which the premises in respect of which the licences are applied for are situated; and

(e) sent to the sub-county physical planning officer.

(4) The sub-county public health officer; and the sub-county physical planning officer shall within 14 days after receipt of the notice, report as fully as possible to the Sub-county Committee on all matters which may be relevant to the consideration of the application.

(5) The Inspector-General of Police or, as the case may be, the police officer appointed by him shall submit a report to the sub-county Committee on any matter relevant to the application if in his opinion the applicant should not be granted a license.

(6) Any person may lodge objection to an application.

(7) Every objection to an application shall be made in writing to the Secretary to the Sub-county Committee, and the objector shall serve notice of the grounds of the objection on the applicant, personally or by post, at least seven days before the hearing of the application and the onus of proof of such service shall be on the objector.

(8) A Sub-county Committee may of its own motion take notice of any matter or thing which, in the opinion of the Committee, constitutes an objection to an application, whether or not any objection has been otherwise lodged.

(9) Where in respect of an application a Sub-county Committee acts in pursuance of subsection (7), the Committee shall inform the applicant of the nature of the objection, and shall, if the applicant so requests, adjourn the hearing for such period, not being less than seven days, as the Sub-county Committee considers necessary to enable the applicant to reply thereto.

(10) Every person making an application shall, save as otherwise provided, appear in person or by an advocate before the Sub-county Committee, and shall satisfy the Sub-county Committee that there is need for the grant of a licence of the type applied for in the particular locality in respect of which the application is made.

(11) A Sub-county Committee may require the

personal appearance before it of the applicant, or of the manager of the premises to which the application relates, or of both of them and of any other person whose attendance is considered by the committee to be necessary.

(12) Any objector may appear personally or by an advocate at the hearing of the application.

(13) A sub-county committee may authorize, in writing, any person to appear before any Sub-county Committee having jurisdiction in any part of the area within the jurisdiction of the County for the purpose of representing the inhabitants of that part in respect of any objection lodged to an application.

(14) Where a Sub-county Committee considers it necessary to take evidence respecting any question to be determined by the court, such evidence shall be given on oath, and the chairman shall be empowered to administer oaths.

(15) For the purposes of Chapter XI of the Penal Code (which concerns offences relating to the administration of justice), all proceedings before a Sub-county committee shall be deemed to be judicial proceedings.

(16) Every Sub-county Committee shall maintain records of all its proceedings, and, in particular, of the purpose for which an application was made, and notes of the evidence given and of the arguments adduced and the decision of the court thereon:

Provided that no decision shall be quashed on appeal solely by reason of any omission or error in such record, unless it appears that a substantial miscarriage of justice has thereby been occasioned.

(17) The Sub-county Committee shall, within twenty-one days of receipt of the application under subsection (1), record the application and assess the same on the basis of the objections received if any and the interests of the sub-county, and shall ensure that-

(a) the available premises are suitable with regard to the nature of the licence being sought;

(b) the premises conform to the prescribed requirements of the occupational health and safety regulations;

(c) the applicant possesses the infrastructure and equipment necessary to carry out the business applied for;

(d) the applicant for a licence to brew, distill , bottle or manufacture an alcoholic drink possesses necessary qualifications and relevant requirements stipulated under Standards Act or any other relevant written law; and

(e) the premises has sufficient number of competent staff in line with such norms as may be prescribed.

Grant of a licence.

12. (1) The Sub-county Committee shall, after considering the application under section 11, indicate in writing whether it objects to the grant of the licence applied for.

(2) Where the Sub-county Committee has no objection to the application under section 11, it shall grant a licence to the applicant upon payment of the prescribed fee.

(3) The licence issued shall be in such form as may be prescribed and subject to such conditions as the Sub-county Committee may consider fit.

(4) Where the Sub-county Committee is not satisfied with the application under subsection (1), it may—

(a) reject the application giving reasons and notify the applicant accordingly within thirty days of the decision to reject; or

(b) make comments and recommendations thereon and return it to the applicant within fourteen days.

(5) The applicant to whom the application is returned under subsection (4) (b) may re-submit a revised application within thirty days of the date of notification.

(6) On receipt of any revised application under subsection (5), the Sub-county Committee shall, within thirty days determine the application in accordance with this Act and upon such determination, if satisfied, issue a licence.

(7) Where the Sub-county Committee grants a licence under this section it shall, publish the grant in the ward administrator’s office.

Issue of a provisional licence.

13. (1) Despite the provisions of sections 11 and 12, the Sub-county Committee may issue a provisional license for the manufacture or sale of an alcoholic drink for such period not exceeding six months as may be appropriate where the Committee is satisfied that the applicant for the license has demonstrated to the satisfaction of the Committee that the manufacture or sale of the alcoholic drink is licensed in another county but the issuance of the provisional license shall be subject to the applicant complying with the provisions of sections 11 and 12 within the period of the provisional licence.

(2) Where premises are about to be constructed or reconstructed or are in course of construction or reconstruction for the purpose of being used for the sale of alcoholic drinks for consumption on such premises, any person having an interest in the premises may apply in the prescribed form to the Sub-county committee for an assurance that, on the completion of the construction or reconstruction, a licence of the type to be specified in the application will be granted in respect of such premises.

(3) The provisions of section 11 and 12 shall apply to such applications, which shall be accompanied by a signed copy of the plans of such premises.

(4) The Sub-county committee may, subject to such reasonable conditions as it may therein include, give to the applicant an assurance in the prescribed form that, on the completion of the premises, a licence of the type specified therein will be granted or it may refuse to give such an assurance.

(5) Where such an assurance has been given under subsection (4), the Sub-county committee may, on any date, on being satisfied that the premises have been completed in accordance with the signed plans submitted under sub section (3) and that any conditions which may have been imposed in the assurance have been complied with, issue to the applicant a licence of the type specified in the assurance in respect of the premises.

(6) Any assurance given under subsection (4) shall become ineffective and the Sub-county committee shall not issue a licence if, between the date of the giving thereof and the date of completion of the premises, the applicant

becomes a person to whom in accordance with section 15, a licence may not be granted.

Condition of premises.

14. (1) The Sub-county Committee shall not grant a new licence for the sale of an alcoholic drink to be consumed on the premises unless the Sub-county committee is satisfied—

(a) that it would be in the public interest for provision to be made for the sale of alcoholic drink for consumption on the premises in the particular locality in respect of which the application is made, and that the number of such premises in respect of which such licences have already been granted is insufficient for the requirement of the locality given the population density per square kilometre and the permitted maximum number of such premises as shall be prescribed by law: Provided that no licence shall be granted to sell alcoholic drinks in any institution of basic education including primary and secondary schools or any residential area or premises as have been demarcated by or under the relevant written laws;

(b) that the premises in respect of which the application is made are in good repair and are in a clean and wholesome condition, and are provided with adequate and proper sanitary arrangements; (c) that the premises in respect of which the application is made are located at least three hundred metres from any nursery, primary, secondary or other learning institutions for persons under the age of eighteen years.

(2) The Sub-county Committee shall not grant a licence for the sale of an alcoholic drink in—

(a) a supermarket or such other related retail chain store unless it is satisfied that the applicant has taken measures to ensure that the area in which the sale is to take place is not accessible to persons under the age of eighteen years;

(b) an outlet or premises located within a bus park, fuel station, or a fast food restaurant.

(3) Despite subsection (1), the Sub-county Committee may issue a licence to a premise located within three hundred metres of any nursery, primary, secondary or other

learning institution for persons under the age of eighteen years only if –

(a) the premises do not share a wall with the institution and are sealed off by a physical and non transparent barrier that ensures zero visibility of the premise from the locality of the institution;

(b) the premises displays on its outside any of the prescribed health messages in a clear and visible manner;

(c) the premises do not bear any outdoor alcoholic drinks promotion or advertisement;

(d) the applicant does not engage in activities that interfere with learning in the institution or activities that calculated to attract persons under the age of eighteen to the premises;

(4) in respect of subsection 1(c) no new nursery, primary or secondary school or any other learning institutions will be licensed if it is within three hundred metres from a licensed alcoholic drinks premises. The officer responsible for the physical planning in the Sub-County shall advice on the existing or record future plans prior to issuing of either licence.

Persons not eligible for a licence.

15. (1) The Sub-County committee shall not grant a new licence or transfer a licence to any person who—

(a) has failed to satisfy the Sub-County Committee, if called upon to do so, of his good character and standing in relation to the expectations in this Act; or

(b) has been convicted of an offence under this Act or of any offence of which the sentence is imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or

(c) in the case of a retail licence, is not resident in Kenya; or

(d) is under eighteen years of age; or

(e) is an undischarged bankrupt.

(2) The Sub-county committee may refuse to renew an existing licence only when the Sub-county Committee is satisfied that-

(a) the licensee is not a fit and proper person to hold the licence; or

(b) the licensee has been convicted of an offence under this Act or any Act at any time in force regulating the manufacture, distillation,

distribution sale of an alcoholic drink for more than three times within one year; or

(c) has been convicted of an offence and sentenced to imprisonment without the option of a fine in Kenya or elsewhere for a period in excess of six months; or

(d) the business to which the licence relates is conducted in a manner that is in breach of this Act, or any other rules and regulations for the time being in effect, or conditions set by the Sub-county Committee ; or

(e) the conditions of the licence have not been satisfactorily fulfilled; or

(f) the premises to which the licence relates are not in a proper state of repair, or are not provided with proper sanitary arrangements, or do not comply with the reasonable requirements of the Sub-county public health officer and the owner of the premises or the licensee refuses or is unable to give satisfactory guarantees that the necessary repairs will be carried out, or due compliance effected, as the case may be, within a time specified by the Sub-county Committee.

Licensing power of sub county committee.

16. (1) Except as otherwise provided in this Act, a Sub- county Committee may, subject to this Part, grant, renew, transfer or remove a licence, and may embody therein such conditions as it may deem appropriate, or it may refuse to grant, renew, transfer, withdraw or cancel a licence.

(2) Every licence and every renewal, transfer, withdrawal or cancellation thereof shall be sufficiently authenticated by the Sub-county Committee.

(3) Every grant of a licence or its every renewal or transfer shall—

(a) be subject to the payment of such fee or fees as may be prescribed;

(b) expire on thirty first day of December each year;
(c) specify in the licence the hours stipulated under the First Schedule and as national legislation may

provide within which the sale of alcohol is permitted and any other relevant condition.

(4) Where an application for the renewal of a licence has been made and the Sub-county Committee has not by the date of expiration of the licence reached a decision thereon, such licence shall continue in force until the decision of the Sub-county Committee is made known.

(5) Where an application for a licence has been refused, or a licence has been cancelled, no subsequent application by the former applicant or licensee for a licence of the same description shall be considered by the Sub-county Committee during the period of six months from the date of such refusal or cancellation, except at the discretion of the Sub-county Committee.

Appeals to review committee.

17. (1) An applicant whose application for a new licence, to renew or transfer a licence has been refused or cancelled may within fourteen days of such refusal, request in writing the review of such refusal to the Review Committee.

(2) A person aggrieved by the decision of the sub-county committee to grant a new licence or to renew a licence may appeal in writing to the review committee for a review of such decision.

(3) Upon receipt of a request under this section, the Review Committee shall notify the sub-county committee of the pending review.

(4) The Review Committee shall within twenty-one days consider and make a final determination on the request for review.

(5) The Review Committee may—

(a) dismiss the request for review if in its opinion, the request is frivolous or vexatious;

(b) uphold the decision of the sub-county committee;

(c) annul the decision of the sub-county committee

(d) give directions to the sub-county committee with respect to any action to be taken;

(e) make any other declaration as it may deem fit.

Exhaustion of statutory mechanism.

18. An appeal to the review committee shall constitute a statutory mechanism requiring to be exhausted before appeal to court is made.

Appeals to Court.

19. An applicant under section 17 who is not satisfied with the decision of the Review Committee may within twenty-one days appeal to the High Court.

Licences to body corporate.

20. (1) A licence issued to a body corporate shall be issued in the name of the body corporate:

PROVIDED that the Sub-county committee may require prior disclosure of the directorship of the body corporate or refuse to grant a licence to the body corporate if any of the directors does not qualify to be granted the licence individually.

(2) No transfer of a licence issued to a body corporate shall be necessary on any change in the office of secretary, but any person for the time being holding such office shall be entitled to the privileges granted by, and shall be subject to the duties and liabilities imposed upon the holder of, such licence.

Types of licences.

21. (1) The several licences which may be granted under this Act shall be those specified in the Second Schedule, and the provisions of that Schedule and of any rules made under this Act shall have effect in relation to the respective licences therein specified.

(2) Save as otherwise provided in this Act, no licence may be granted so as to be applicable to more premises than one.

(3) The Sub-county Committee shall, when a licence is granted, renewed, withdrawn or cancelled, include in the licence a sufficient description of the licensed premises.

Transfer of licence.

22. (1) Where a licensee sells or leases or otherwise disposes of the premises or business specified in his licence, he may apply in writing to the Sub-county committee for the transfer of his licence to the purchaser or lessee or otherwise of such premises, and the Sub-county Committee may, if it thinks fit, grant a transfer of such licence.

(2) No further fee shall be payable in respect of a licence granted under subsection (3) if, at the date of the grant, the licence which was temporarily transferred was valid for a period of more than six months.

(3) In the event of the death, bankruptcy or unsoundness of mind of a licensee, or in any similar event to which the Sub-county committee declares in writing that

this section should be applied, it shall be lawful, for the purposes of this Act for the executor. administrator, trustee or manager, as the case may be or any other person approved by the Sub- county committee, to carry on the business of the licensee without any transfer or grant of a licence either personally or by an agent approved by the Sub-county committee.

(4) Every person to whom a licence may have been transferred under subsection (1), and every person permitted to carry on a business without a transfer or grant of a licence in pursuance of subsection (3), shall possess all the rights and be liable to all the duties and obligations of the original licensee

Removal of licences.

23. (1) If the renewal of a licence is refused, the licensee shall, on payment of the proportionate part of the fee for the appropriate licence, be entitled to a licence of such description and for such period, not exceeding three months, as the Sub-county Committee may consider necessary for the purpose of disposing of the alcoholic drink or apparatus on the premises, such period to commence on the day after the last sitting of the Sub-county Committee at which the renewal of his licence has been refused, or on the day after the termination of his existing licence, whichever day is the later.

Licence to be displayed.

24. (1) Every licence shall be prominently and conspicuously displayed on the premises to which it relates, and any licensee who fails or neglects so to display his licence commits an offence.

(2) Where a wholesale alcoholic drink licence is granted so as to be applicable to more premises than one, it shall be displayed in the premises first named therein and copies thereof displayed in the other outlets.

(3) Any person causing or permitting to be on his premises or on premises under his control any words, letters or sign falsely importing that he is a licensee commits an offence.

Under age persons not to be employed.

25. (1) Notwithstanding the provisions of any other written law, no licensee shall employ a person under the age, to sell, control or supervise the sale of alcoholic drinks or to have the custody or control of alcoholic drinks on licensed premises.

(2) Where a licensee permits another person to manage, superintend or conduct the day-to-day business of the premises in respect of which he is licensed, the licensee shall not be relieved of his duties and obligations under this Act.

(3) Any person who contravenes the provisions of this section commits an offence.

Exclusion of drunk and disorderly persons from premises.

26. (1) A licensee or an agent or employee of a licensee may refuse to admit to, and shall expel from, the premises to which his licence relates any person who is drunk and disorderly, violent, or quarrelsome, or whose presence would subject the licensee to a fine or penalty under this Act.

(2) Any person referred to in subsection (1) who, on being requested by the licensee or his agent or employee, or by a police officer, to quit the licensed premises, refuses to do so, commits an offence.

(3) On the demand of a licensee or his agent or employee, a police officer shall expel or assist in expelling from the licensed premises the person referred to in subsection (1).

(4) A licensee who permits any drunkenness leading to violent, quarrelsome or riotous conduct to take place on the premises to which the licence relates commits an offence.

Restrictions on debt from sale of alcoholic drinks.

27. No suit shall be maintainable to recover any debt alleged to be due in respect of the sale of any alcoholic drink which was delivered for consumption on the premises where it was sold unless proof of sale as provided for in section 43, is established.

Exclusion of underage persons from premises.

28. (1) No person holding a licence to manufacture, store or sell alcoholic drinks under this Act shall allow a person under the age of eighteen years to enter or gain access to the area in which the alcoholic drink is manufactured, stored, sold or consumed.

(2) A person shall not enter or gain access to an area referred to under subsection (1) if such a person is in custody or accompanied by a person under the age of eighteen years.

(3) Any person who contravenes the provisions of subsection (1) and (2) commits an offence.

Reports by public health officer.

29. (1) A Sub-county public health officer within whose jurisdiction the premises fall shall report to the Sub-county Committee any licensed premises which are deficient in their state of sanitary or drainage conditions, or which are in bad repair.

(2) A Sub-county public health officer or any person authorized by him in writing in that behalf may enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

(3) A police officer not below the rank of Inspector shall report in writing to the chairperson of the appropriate Sub-county Committee every case in which a licensee is of drunken habits or keeps a disorderly house, or commits any breach of any of the provisions of this Act or of his licence.

(4) A police officer not below the rank of Inspector may without written authority enter and inspect any licensed premises for the purpose of ascertaining whether a report under subsection (1) is required.

Cancellation of licence

30. (1) Upon receipt of a report made under section 29 the Sub-county Committee shall—

(a) send, by registered post or other verifiable mode of dispatch, a copy of the report to the licensee concerned therewith, informing him that at a meeting of the Sub-county Committee to be held on a date to be specified, but not less than thirty days there from, the report will be considered by the Sub-county Committee;

(b) send a copy of the report to every member of the Sub-county committee and to the Officer Commanding Police Services in the Sub-county;

(c) inform the Sub-county public health officer or the police officer, as the case may be, of the date upon which the Sub-county committee will consider the report, and require him to attend on the date specified.

(2) Any licensee concerning whom a report is to be considered may appear in person or by advocate before the

Sub-county Committee.

(3) The Sub-county Committee, having duly considered the report and having heard the licensee, if he appears, may, if it thinks fit, cancel the licence of the licensee reported upon, or it may make such an order in respect of such licence or the licensed premises specified therein as, in the opinion of the Sub-county Committee, is necessary.

(4) Any person aggrieved by the decision of the Sub-county committee upon any such report may within twenty-one days appeal against the decision to the Review Committee.

(5) The Review Committee, on an appeal under this section, may confirm or reverse the decision of the Sub-county Committee.

(6) If a licence is cancelled or if on appeal under sub section (5), the appeal is dismissed by the Review Committee, the licensee shall be entitled, on payment of the proportionate part of the fee for the appropriate licence, to a licence of such description and for such period, not exceeding three months, as the Sub-county committee may deem necessary for the purpose of disposing of the alcoholic drink or apparatus on the premises, such licence to run from the date of the decision of the Sub-county Committee or of the Court as the case may be.

PART IV—GENERAL REQUIREMENTS

Conformity with requirements of the Act.

31. (1) No person shall manufacture, or distribute or sell an alcoholic drink in the county that does not conform to the requirements of this Act or any other written law regulating alcoholic drinks.

(2) A person who contravenes the provisions of this section in relation to manufacture, distribution and importation of an alcoholic drink commits an offence and shall be liable to a fine not exceeding two million shillings, or to imprisonment for a term not exceeding five years, or to both.

(3) A person who contravenes the provisions of this section in relation to sale of an alcoholic drink commits an offence and shall be liable to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment

for a term not exceeding one year, or to both.

Sale to under age persons.

32. (1) No person shall sell, supply or provide knowingly an alcoholic drink to a person under the age of eighteen years.

(2) Subject to subsection (3), a person who contravenes the provisions of subsection (1) commits an offence and shall be liable to a fine not exceeding one hundred and fifty thousand shillings, or to imprisonment for a term not exceeding one year, or to both.

(3) Notwithstanding the provisions of subsection (1), it shall be a defence to an offence under this section if it is established that the accused person attempted to verify that the young person was at least eighteen years of age by asking for and being shown any of the documents specified in subsection (4) for the purpose of verifying the age of the young person and believed, on reasonable grounds, that the documentation was authentic.

(4) For the purposes of this section, the following documentation may be used to verify a person's age –

(a) a national identity card issued by the Republic of Kenya;

(b) a passport issued by the Republic of Kenya or any other country; or

(c) any other documentation as the Executive Member may prescribe.

Display of signs.

33. (1) Every retailer shall post, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or the availing of an alcoholic drink to a person under the age of eighteen years and sale of alcoholic drinks to an intoxicated person is prohibited by law.

(2) Every sign required to be posted under subsection (1) shall—

(a) be displayed on a surface measuring not less than 24 inches by 18 inches in size;

(b) bear the word "WARNING" in capital letters followed by the prescribed health warning which shall appear in conspicuous and legible type and shall be black on a white background or white on a

black background and shall be enclosed by a rectangular border that is the same colour as the letters of the statement;

(c) be in English or in Kiswahili.

(3) A retailer who contravenes any of the provisions of this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

Prohibition of sale by vending machines.

34. (1) No person shall sell or permit an alcoholic drink to be sold by way of an automatic vending machine.

(2) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding twelve months, or to both.

Prohibition of sale in sachets.

35. (1) No person shall sell, manufacture, pack or distribute an alcoholic drink in sachets or such other form as may be prescribed under this Act or any other relevant written law.

(2) Notwithstanding the provisions of subsection (1), -

(a) no person shall manufacture, pack, distribute or sell in the county an alcoholic drink in a container of less than 250 mililitre;

(b) any other distilled or fortified alcoholic drink shall only be manufactured, packed, sold or distributed in glass bottles of the kind specified in paragraph (a) or as may be prescribed in the National or County legislation related to control of alcoholic drinks.

(3) A person who contravenes this section commits an offence and shall be liable to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding six months, or to both.

PART V—SALE AND CONSUMPTION

Prohibition of sale to an intoxicated person.

36. Any licensee who sells an alcoholic drink to a person already in a state of intoxication or by any means encourages or incites him to consume an alcoholic drink commits an offence.

Arrest for disorderly conduct.

37. (1) Any person found by a police officer to be drunk and incapable or drunk and disorderly in or near a street, road, licensed premises, shop, hotel or other public

place may be arrested without warrant and brought without unreasonable delay before a Magistrate.

(2) Any person convicted of being drunk and incapable or drunk and disorderly in or near a place referred to in subsection (1) shall be liable to a fine not exceeding one thousand shillings or to imprisonment for a term not exceeding three months or to both.

(3) Upon conviction under sub-section (2), the convicting Magistrate may issue an order for community service to any person convicted of the offence under this section for more than one time in accordance with provisions of the Community Service Orders Act, 1998.

(4) Despite sub-section (3), any person convicted under subsection (2) on more than three occasions in any period of twelve months shall—

(a) be ordered by the convicting Magistrate to undergo at his own cost, such rehabilitation programme as may be appropriate in a public health institution;

(b) be forthwith reported by the convicting Magistrate to the Sub-county Committee, which shall inform such licensees as he deems desirable of such convictions, and thereupon, and until a period of twelve months has passed without any further such conviction in respect of that person, any licensee so informed who knowingly sells or supplies alcoholic drinks to or for delivery to that person commits an offence, and it shall furthermore be an offence for that person to be in possession of any alcoholic drink.

Breach of licence.

38. (1) Any person who sells an alcoholic drink or offers or exposes it for sale or who bottles an alcoholic drink except under and in accordance with, and on such premises as may be specified in a licence issued in that behalf under this Act commits an offence and is liable—

(a) for a first offence, to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding nine months, or to both;

(b) for a second or subsequent offence, to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding one year or to both,

and in addition to any penalty imposed under paragraph (a) or (b), the court may order, the forfeiture of all alcoholic drinks found in the possession, custody or control of the person convicted, together with the vessels containing the alcoholic drink.

(2) Except as may be provided for in this Act, no person shall-

(a) sell, an alcoholic drink in any workplace, office, factory, public park or any public recreational facility, public transport vehicle, public beach, sports stadium or public street;

(b) sell, purchase or consume an alcoholic drink in an alcoholic drink selling outlet after the expiry of the hours for which the outlet is licensed to sell the alcoholic drink.

(3) In order to promote traceability and safety, all alcoholic drinks sold at licensed retail outlets shall be distributed only from registered or licensed warehouses or wholesalers within the County

(4) Any person who contravenes the provisions of subsection (2) and (3) commits an offence and shall be liable to the penalties specified under subsection (1).

Sale to an authorized officer.

39. Any person who knowingly sells, supplies or offers an alcoholic drink to an authorized officer or to a police officer in uniform or who harbours or suffers to remain on licensed premises any such police officer except for the purpose of keeping or restoring order or otherwise in the execution of his duty, commits an offence and is liable to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding three months or to both.

Non-disclosure of conviction.

40. Any person who is required by any provision of this Act to disclose any conviction and fails to do so when making any application commits an offence.

Sale without licence.

41. (1) If any person purchases any alcoholic drink from a licensee whose licence does not cover the sale of that alcoholic drink for consumption on the premises, and drinks the alcoholic drink on the premises where it is sold, or in any premises adjoining or near to those premises, if belonging to the seller of the alcoholic drink or under his control or used by his permission, or on any highway adjoining or near any such premises, and it is proved to the court that the drinking of the alcoholic drink was with the privity or consent of the licensee who sold the alcoholic drink, the licensee commits an offence.

(2) If a licensee whose licence does not cover the sale of alcoholic drink to be consumed on his premises himself takes or carries, or employs or suffers any other person to take or carry, any alcoholic drinks out of or from his premises for the purpose of being sold on his account, or for his benefit or profit, and of being drunk or consumed in any place (whether enclosed or not, and whether or not a public thoroughfare) other than the licensed premises, with intent to evade the conditions of the licence, the licensee commits an offence, and, if the place is any house, tent, shed or other building belonging to the licensee or hired, used or occupied by him, the licensee shall be deemed, unless the contrary is proved, to have intended to evade the conditions of the licence.

Sale of adulterated drinks.

42. (1) No person shall keep for sale, offer for sale or sell-

(a) any alcoholic drink which has been in any way adulterated, or diluted by any person;

(b) any non- alcoholic drink which has been in any way adulterated with alcohol, or which contains any of the substances prohibited under Section 64.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding ten million Kenya shillings or to imprisonment for a term not exceeding ten years, or to both.

(3) On the conviction of a licensee of an offence under subsection (2), the court may, in addition to any other penalty it may lawfully impose, if it finds that the drink in respect of which the offence was committed was adulterated by a substance or substances which rendered the drink unfit for human consumption, and unless the licensee proves to the satisfaction of the court that he took all reasonable precautions against such adulteration and that such adulteration took place without his knowledge or consent, order that his licence be forfeited, and no licence shall thereafter be granted or transferred to him.

Proof of sale.

43. (1) In any proceedings under this Act relating to the sale or consumption of an alcoholic drink, such sale or consumption shall be deemed to be proved if the court is satisfied that a transaction in the nature of a sale took place, whether or not any money has been shown to have passed,

or as the case may be, if the court is satisfied that any consumption was about to take place.

(2) Evidence of consumption or intended consumption of an alcoholic drink, on licensed premises by some person other than the licensee or a member of his family or his employee or agent shall be *prima facie* evidence that the alcoholic drink was sold by or on behalf of the licensee to the person consuming or about to consume the alcoholic drink.

Burden of proof.

44. (1) The onus of proving that a person is licensed under this Act shall lie on that person.

(2) The fact that a person not licensed under this Act to sell alcoholic drinks has a signboard or notice upon or near his premises fitted with a bar or other place containing bottles, casks or vessels so displayed as to induce a reasonable belief that alcoholic drink is sold or served therein, or having alcoholic drink concealed, or more alcoholic drink than is reasonably required for the person residing therein, shall be deemed to be prima facie evidence of the unlawful sale of alcoholic drink by that person.

(3) In any proceedings under this Act, where a person is charged with selling alcoholic drink without a licence or without an appropriate licence, such alcoholic drink being in a bottle and appearing to be unopened and labelled by its bottler, the contents of such bottle shall be deemed, unless the contrary is proved, to be alcoholic drink of the description specified on the label thereof.

Endorsement of conviction on licence.

45. Every licensee who is convicted of an offence under this Act shall produce his licence to the court convicting him, and the court shall endorse every such conviction on the licence and the relevant administrative officer of the court shall inform the relevant Sub-county committee.

Forfeiture of licence upon conviction.

46. If in any proceedings before a Committee or court it appears that a licensee—

(a) whether he was present in the licensed premises or not, has permitted an unlicensed person to be the owner or part owner of the business of the licensed premises or to have a substantial interest in that business, except with the consent of the Sub-

county committee; or (b) is convicted of an offence under this Act and a previous conviction within the preceding twelve months of the same or any other offence under this Act or three such previous convictions within the preceding five years is or are proved; or

(c) is twice convicted within twelve months of selling, offering or keeping for sale any adulterated alcoholic drink,

then the court may, in addition to any other penalty which it may lawfully impose, order that his licence be forfeited, and that no licence shall be issued or transferred to him for such period as the court may order.

PART VI—ADVERTISING AND PROMOTION

Prohibited advertisement and promotion.

47. (1) No person shall promote an alcoholic drink by way of outdoor advertisement—

(a) in a manner that is false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects, health hazards or social effects of the alcoholic drink;

(b) through painting or decorating any building or premises except the interior part of licensed premises with the name of the alcoholic drink or manufacturer, colour and brand images or logos associated with a manufacturer or an alcoholic drink or any other related form; and

(c) in places demarcated under any written law as residential areas or within a distance of three hundred metres from nursery, primary, secondary school, or other institution of learning for persons under the age of eighteen years or a place of worship, health facility or a public playground or any other public land or property or in public service vehicle.

(2) A person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the

Constitution is limited to the extent specified in this section for the purpose of—

(a) protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks; and

(b) protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

Promotion at events for the underage.

48. (1) No person shall promote an alcoholic drink—

(a) at any event or activity associated with persons under the age of eighteen years;

(b) using such things or materials that are associated with persons under the age of eighteen years.

(2) Any person who contravenes the provisions of this section commits an offence and shall be liable to a fine not exceeding five hundred thousand shillings or imprisonment for a term not exceeding three years or to both such fine and imprisonment.

(3) Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

Encouraging consumption.

49. (1) A licensee shall not—

(a) award, grant or give to a person an alcoholic drink for consumption in or outside the licensed premises without any consideration equivalent to the market price of the alcoholic drink; or

(b) promote any alcoholic drink in such a manner as to encourage more consumption of an alcoholic drink in order to win an award or prize.

(2) A person who contravenes any of the provisions of this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

(3) Pursuant to Article 24(2) of the Constitution, the right to freedom of expression set out in Article 33 of the Constitution is limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks from misleading or deceptive inducements to use alcoholic drinks and also for the purpose of protecting persons under the age of eighteen years from negative impact on health and social development from exposure to advertisements of alcoholic drinks.

PART VII—ENFORCEMENT

Authorized officers.

50. (1) The Director shall in consultation with the County Public Service Board appoint for each Sub-county, any person or class of persons whether in the employment of the Directorate or not, to be authorised officers for purposes of this Act.

(2) The Director shall issue a certificate of appointment to every person appointed under this section.

(3) Notwithstanding the provisions of this section, the following officers shall be deemed to be authorised officers for the purposes of this Act-

(a) public health officers appointed under the Public Health Act ; and

(b) officers appointed as enforcement officers under County Legislation, the National Police Service Act, Standards Act, Weights and Measures Act or Anti-counterfeit Act.

(c) any other person upon whom any written law vests functions of the maintenance of law and order.

Power of authorized officer to enter any place.

51. (l) For the purposes of ensuring compliance with this Act, an authorised officer may, at any reasonable time, enter any place in which the officer believes on reasonable grounds that any person or persons is in any way contravening the provisions of this Act.

(2) An authorised officer entering any premises under this section shall, if so required, produce for inspection by the person who is or appears to be in charge of the premises the certificate issued to him under section 50 (2).

(3) Pursuant to Article 24(2) of the Constitution, the right to privacy set out in Article 31 of the Constitution is limited to the extent specified in this section for the

purpose of protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

General Powers of an authorized officer.

52. (1) In carrying out an inspection in any place pursuant to section 53, an authorised officer may—

(a) examine an alcoholic drink or anything referred to in that section;

(b) require any person in such place to produce for inspection, in the manner and form requested by the officer, the alcoholic drink or thing;

(c) open or require any person in the place to open any container or package found in the place that the officer believes on reasonable grounds contains the alcoholic drink or thing;

(d) conduct any test or analysis or take any measurements; or

(e) require any person found in the place to produce for inspection or copying, any written or electronic information that is relevant to the administration or enforcement of this Act.

(2) Pursuant to Article 24(2) of the Constitution, the rights to privacy and property set out in Articles 31 and 40 of the Constitution are limited to the extent specified in this section for the purpose of enforcement of this Act and for protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

Use of records.

53. In carrying out an inspection in a place, an authorised officer may—

(a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;

(b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying;

(c) use or cause to be used any copying equipment in the place to make copies of any data, record or document;

(d) scrutinize any other record system in use in that place.

(3) Pursuant to Article 24(2) of the Constitution, the rights to privacy and property set out in Articles 31 and 40 of the Constitution are limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

Restriction to enter dwelling place.

54. An authorised officer may not enter a dwelling place except with the consent of the occupant or under the authority of a warrant issued under section 57.

Court to issue warrant.

55. (1) Upon an ex-parte application, a magistrate or judge of the High Court, may issue a warrant authorising the authorised officer named in the warrant to enter and inspect a dwelling place, subject to any conditions specified in the warrant, if the magistrate or judge is satisfied by information on oath that—

(a) the dwelling place is a place referred to in section 53;

(b) entry to the dwelling place is necessary for the administration or enforcement of this Act;

(c) the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

(2) The time of such entry shall be between six o'clock in the forenoon and six o'clock in the afternoon of any day of the week.

Certificate of analysis.

56. An authorised officer who has analyzed or examined an alcoholic drink or thing under this Act, or a sample of it, shall issue a certificate or report setting out the results of the analysis or examination

Duty to facilitate officers.

57. (1) The owner of a place inspected by an authorised officer under this Act or the person in charge of the place and every person found in the place shall —

(a) provide all reasonable assistance to enable the authorised officer to carry out his duties under this Act;

(b) furnish the authorised officer with such information as the officer reasonably requires for

the purpose for which entry into the place has been made.

(2) The inspecting agent in subsection (1) shall issue the respective inspection completion and certification certificate once satisfied with the inspection.

Authorized officer not to be obstructed.

58. No person shall obstruct or hinder, or knowingly make a false or misleading statement to an authorised officer who is carrying out duties under this Act

Power of seizure.

59. (1) During an inspection under this Act, an authorised officer may seize any alcoholic drink or thing by means of which or in relation to which the officer believes, on reasonable grounds, that this Act has been contravened and a full inventory thereof shall be made at the time of such seizure by the officer.

(2) The authorised officer may direct that any alcoholic drink or thing seized be kept or stored in the place where it was seized or that it be removed to another place.

(3) Unless authorised by an officer, no person shall remove, alter or interfere in any manner with any alcohol, alcoholic drink or other thing seized.

(4) Any person from whom an alcoholic drink or thing was seized may, within thirty days after the date of seizure, apply to the High Court for an order of restoration, and shall send notice containing the prescribed information to the Executive Member within the prescribed time and in the prescribed manner.

(5) Pursuant to Article 24(2) of the Constitution, the rights to privacy and property set out in Articles 31 and 40 of the Constitution are limited to the extent specified in this section for the purpose of protecting consumers of alcoholic drinks by ensuring fair and ethical business practices related to production, distribution, promotion and sale of alcoholic drinks as specified in this Act.

Order for restoration.

60. (1) The Sub-County Committee, Review Committee or Court may order that the alcoholic drink or thing be restored immediately to the applicant if, on hearing the application, the court is satisfied that—

(a) the applicant is entitled to possession of the alcoholic drink or thing seized; and

(b) the alcoholic drink or thing seized is not and will not be required as evidence in any proceedings in

respect of an offence under this Act.

(2) Where upon hearing an application made under subsection (1) the court is satisfied that the applicant is entitled to possession of the alcoholic drink or thing seized but is not satisfied with respect to the matters mentioned in paragraph (b) of subsection (1), the court may order that the alcoholic drink or thing seized be restored to the applicant on the expiration of one hundred and eighty days from the date of seizure if no proceedings in respect of an offence under this Act have been commenced before that time.

General penalty.

61. Any person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term not exceeding three years, or to both.

Offences to be cognizable.

62. (1) Offences under this Act, other than the offences specified under Part VI, shall be cognizable offences.

(2) Where a corporation, registered society or other similar legal entity commits an offence under this Act, any director or officer of the corporation, society or legal entity who acquiesced in the offence commits an offence and shall, on conviction, be liable to the penalty provided for by this Act in respect of the offence committed by the corporation, society or legal entity, whether or not such corporation, society or legal entity has been prosecuted.

(3) In any prosecution for an offence under this Act, it shall be sufficient proof of the offence to establish that the offence was committed by an employee or agent of the accused.

(4) Any act done or omitted to be done by an employee in contravention of any of the provisions of this Act shall be deemed also to be the act or omission of the employer, and any proceedings for an offence arising out of such act or omission may be taken against both the employer and the employee.

Nature of evidence in proceedings.

63. (1) In any prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified to be a true copy thereof shall be admissible in evidence and shall, in the absence of evidence to the contrary, be

proof of its contents.

(2) Subject to this Part, a certificate or report purporting to be signed by an officer stating that the officer analyzed anything to which this Act applies and stating the results of the analysis, shall be admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.

(3) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced notice of not less than seven days of that intention together with a copy of the certificate or report.

(4) The party against whom the certificate or report provided for under subsection (3) is produced may, with leave of the court, require the attendance of the officer for purposes of cross examination.

(5) In a prosecution for a contravention of this Act-

(a) information on a package indicating that it contains an alcoholic drink is, in the absence of evidence to the contrary, proof that the package contains an alcoholic drink; and

(b) a name or address on a package purporting to be the name or address of the person by whom the alcoholic drink was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person.

PART VIII—MISCELLANEOUS

Regulations.

64. (1) The Executive Member may, on recommendation of the Directorate make Regulations generally for the better carrying out of the objects of this Act.

(2) Without prejudice to the generality of subsection (1), the Regulations may—

(a) prescribe anything required by this Act to be prescribed or prohibit anything required by this Act to be prohibited;

(b) prescribe substances as harmful constituents of an alcoholic drink.

(c) Prescribe the fees payable under this Act; and

(d) Prescribe the forms of applications, notices, licences and other documents for use under this Act.

(3) Pursuant to Article 94(6) of the Constitution, the legislative authority delegated to the Executive Member in this section shall be exercised only for the purpose and inten t specified in this section and in accordance with the principles and standards set out in the Interpretation and General Provisions Act and the Statutory instrument Act, 2013.

Transitional Consequences.

65. (1) Notwithstanding any other provision of this Act to the contrary, a person who, immediately before the commencement of this Act was in accordance with Alcoholic Drinks Control Act, 2010 a manufacturer, importer, distributor or retailer of any alcoholic drink under that Act shall be deemed to be a manufacturer, importer, distributor or retailer of any alcoholic drink under this Act.

No. 4 of 2010.

(2) The manufacturer, importer, exporter, distributor or retailer of any alcoholic drink in the contemplated referred to in subsection (1), shall, within four months of upon commencement of this Act, comply with the requirements of this Act.

FIRST SCHEDULE (S.16)

LICENCE HOURS

LICENCES	LICENCE HOURS, CONDITIONS AND EXEMPTIONS
1. General Retail Alcoholic Drink Licence (on licence)	Authorized to sell alcoholic drink: (a) From Monday to Friday during the hours of 2.00 p.m. to 11.00 p.m. (b) During weekends and public holidays during the hours of 11:00 am to11:00 p.m.
2. General Retail Alcoholic Drink Licence (Off Licence) Wines and Spirits Retailers	Authorized to sell alcoholic drink on any day of the week during the hours of 10: 00 am. to 8:30 p.m.
3. Supermarket or Franchised Retail Chain Stores Alcoholic Drink Licence (Off-Licence)	Authorised to sell alcoholic drink on any day of the week during the hours of 10.00 a.m. to 8:30 p.m.
4. Hotel Alcoholic Drink Licence	Authorized to sell alcoholic drink on any day of the week to a lodger - for his own consumption and his guest's consumption on the premises, at any hour.
5. Club Alcoholic Licence	
(a) Members Club A Members Club licence may only be held by a Club that is a non-profit Association incorporated under the Society's Act.	Authorized to sell alcoholic drink to members on any day of the week at any hour.
(b) Proprietary Club (Including Night Club)	Authorized to sell alcoholic drink any day of the week during the hours of 2.00 p.m. to 3.00 a.m.
6. Theatre Alcoholic Drink Licence.	Authorized to sell alcoholic drink during the hours of 5.00 p.m. to 11.00. p.m.
7. Temporary or Occasional	Authorised to sell alcoholic drink on the

license. day and during the hours stipulated in the license by the Sub-county Committee for the purposes of specific occasions, ceremonies or events as indicated in the application.

SECOND SCHEDULE (S. 21)

TYPES OF LICENCES

The following licences may be granted under this Act

1. **Manufacturer's Licence**

Subject to the conditions specified in the licence, a Manufacturer's licence authorizes the holder to—

(a) manufacture and store the manufactured alcoholic drink in his depot;

(b) sell the product of his manufacturing plant by wholesale in accordance with the conditions that are for the time being, applicable to a holder of a wholesale licence or by delivery from depot throughout Kenya in accordance with the Alcoholic Drinks Control Act, 2010; and No. 4 of 2010

(c) bottle the alcoholic drink subject to such conditions as may be prescribed.

For the purposes of this paragraph, "depot" means premises of whatever description, which are occupied by a Manufacturer for of his trade.

2. Wholesale Licence.

A wholesale licence authorizes the licensee to sell an alcoholic drink at the premises specified in the licence, subject to such conditions as may be prescribed.

3. Retail Licence

A retail licence authorizes the licensee to sell an alcoholic drink on the premises, at the hours and subject to such other conditions as are specified in the licence.

4. Temporary Licence

Authorised to sell alcoholic drink on the day and during the hours stipulated in the license by the Sub-county Committee for the purposes of specific occasions, ceremonies or events as indicated in the application.

5. Distributors' Licence

Authorizes the licensee to distribute alcoholic drinks as may be prescribed.

MEMORANDUM OF OBJECTS AND REASONS

The Bill has been developed pursuant to the provisions of Part 2 (4) (c) of the Fourth Schedule to the Constitution of Kenya, 2010

Part 1 of the Bill provides for the short title and commencement, interpretation and the objects and purpose of the Act

Part II provides for the administration of the Act, including the establishment of a Directorate and the Alcoholic drinks control fund

Part III provides the broad framework for the issuance of licences including the establishment of the various committees

Part IV provides for the general requirements connected to manufacture, distribution and consumption of alcoholic drinks

Part V seeks to specifically regulate the sale and consumption of alcoholic drinks

Part VI provides the framework for advertisement and promotion of alcoholic drinks

Part VII establishes the mechanism for enforcement of the control and regulatory framework for alcoholic drinks

Part VIII grants power to make regulations to the Executive Member for purposes of giving full effect to certain provisions of the Act. The part also makes a provision for transition consequences.

The First Schedule provides for the operational hours for the various licences issued under the Act.

The Second Schedule describes the various types of licences to be issued under the Act.

Dated the 16th April, 2014.

LINUS K. MUCHINA,
Chairman, Committee on Trade and Tourism.